by filing his notice of appeal before the certificate was issued by the learned judge he had applied verbally for further argument and the learned judge had already decided then not to hear further argument and this is so stated in his Grounds of Judgment.

We therefore dismiss the respondents' motion except for prayer (a) and allow prayers (1), (2) and (3) of the appellant's motion. There will be no order as to costs.

Order accordingly.

RIVER ESTATES SDN. BHD. v. DIRECTOR GENERAL OF INLAND REVENUE

[F.C. (Lee Hun Hoe C.J. Borneo, Syed Othman & Abdul Hamid F.JJ.) May 8 & September 8, 1980]

[Kota Kinabalu — Federal Court Civil Appeal No. 37 of 1980]

Revenue Law — Income tax — Supplementary income tax — Timber profit — Company carrying on plantation operations on some estates and timber operations on other estates — Whether company carrying on single business or two separate businesses — Income Tax Act, 1967, ss. 4, 43 & Schedule 3 — Supplementary Income Tax Act, 1967, ss. 19 & 21.

In this case the appellant company was carrying on plantation operations in some estates and timber operations in other estates. Assessments of income tax were raised for the four years of assessment 1968 — 1972. The appellant company was served with notices of additional assessments in 1973 as the Revenue adopted the view that the appellant company's estate or plantation operations were a separate source or business from their timber extraction operations and computed the adjusted income accordingly. The question for the determination of the Special Commissioners was whether upon the facts and in law the appellant company's timber and plantation operations constituted a single integrated business as claimed by the appellant company or were two distinct sources or businesses as claimed by the Revenue. The Special Commissioners decided that the appellant company had separate sources of income in each of its estates and the learned trial judge upheld the decision of the Special Commissioners. The appellant company appealed to the Federal Court.

Held: the company carried out two main categories of business namely plantation activities and timber operations and there were therefore two separate businesses deriving income from the five estates or sources.

Cases referred to:-

(1) *Scales* v. *George Thompson & Co.* 13 T.C. 83.

(2) *Commissioners of Inland Revenue* v. *Williamson Brothers* 31 T.C. 370.

(3) *Nathan* v. *F.C.T.* (1918) 25 C.L.R. 183.

(4) *Rhodesia Metals Ltd.* v. *Taxes Commissioner, South Africa* [1940] 3 All E.R. 422, 426.

(5) *Director-General of Inland Revenue* v. *American Leaf Blending* [1975] 2 M.L.J. 26; [1979] 1 M.L.J. 1.

(6) *Edwards* v. *Bairstow & Harrison* 36 T.C. 207.

(7) *Howden Boiler and Armaments Co. Ltd.* v. *Stewart* (1924) 9 T.C. 205.

HIGH COURT.

S. Woodhull (*Thomas Chia* with him) for the appellants.

Mokhtar bin Haji Sidin (Senior Federal Counsel) (*Joseph Kong* and *Edward Chia* with him) for the respondents.

Cur. Adv. Vult.

B.T.H. Lee J.: This is an appeal by the River Estates Sdn. Bhd. — the appellants herein — against the decision of the Special Commissioners of Income Tax — in this judgment called "Special Commissioners".

The case stated having set out the facts and submissions at length I do not propose to enter on a detailed description of all the relevant circumstances but some reference to the salient features of the case is necessary. The facts as to which there is no dispute as found by the Special Commissioners are these:—

(1) *Litang Estate*

Appellants acquired Litang Estate on Sungei Segama with a total area of 4,700 acres on which 1,000 were planted with rubber. The balance of 3,700 acres was virgin land on incorporation of the appellant company. Logging operations commenced in 1950 in the jungle reserve land on the said estate. In 1957 a rubber nursery was established there and 27 acres of a cleared reserve area, which had been planted with vegetables during the Japanese Occupation, were planted up with rubber in 1953. Between the years 1953 and 1964, the appellants planted 989 acres of rubber, 814 acres of cocoa and 500 acres of oil palm, but severe floods in 1963 and 1965 destroyed virtually all the planted area except 25 acres of oil palm and 619 acres of young rubber. Since then there has only been one small replant of 25 acres of Litang Estate.

(2) *Bode Estate*

This was acquired in 1950 with a total area of 900 acres all of which were planted with rubber.

(3) *Dagat Estate*

In 1952 appellant was given an annual licence to log timber at Dagat. It was his intention to plant bananas in this area but this never materialised since this piece of land was never alienated for plantation. Only timber operations were carried out in that area.

(4) *Tomanggong Estate*

In 1961 appellant acquired 10,025 acres of virgin land from Guthrie Corporation. This area is now known as Tomanggong Estate. Extraction of timber in this area commenced in late 1962 followed by planting of oil palm. By the end of 1964, 1,475 acres were planted but floods in 1965 destroyed 656 acres. Planting continued until 1969 and the appellant found that only about 3,000-3,500 acres of high land out of the 10,025 acres were suitable for planting. The appellant considered this area not to be an economic holding, so it applied to the Sabah State Government for the alienation of 6,454 acres of adjoining Forest Reserve land which was eventually alienated in 1969. The appellant progressively planted a total acreage of 8,382 acres with oil palm.

(5) *Malubok Estate*

Another area of 3,960 acres of largely jungle land, later known as Malubok Estate, was purchased by the appellant in mid-1959. By the end of 1962 the appellant had logged 1,500 acres and planted up 600 acres with cocoa and 100 acres with rubber. Floods in 1963 destroyed 600 acres of that newly planted area, as a result of which it was found that the area was not suitable for planting. The appellant subsequently abandoned this area after extracting all valuable timber in it.

(6) *Tenggara*

In 1965 the appellant was approached by North Borneo Timber Co. Bhd. to log for them on contract an area known as Tenggara in the Kretam Forest Reserve. The appellant agreed to work the area and was given a contract to extract timber. The appellant was paid at a fixed price per cubic foot of logs delivered to North Borneo Timber Co. Bhd. This contract terminated in 1969 when North Borneo Timber Co. Bhd. ceased logging in that area.

Upon the authority of *Scales* v. *George Thompson & Co.*[1] which I think it unnecessary to state at any greater detail, I consider that the point is settled.

The facts which are fully set out in the report of the case before Rowlatt J. appear sufficiently for the purpose of this report from the headnote which reads: —

"The Respondent Company was incorporated in 1905 to take over as a going concern the business of George Thompson & Co., shipowners, ship and insurance brokers, underwriters and merchants. As regards their underwriting business the firm had been represented by two of their partners, who acted on behalf of the partnership as 'names' or members of a syndicate whose credit was used by an underwriting agent in underwriting risks at Lloyd's. The monetary deposit made at Lloyd's in respect of these two partners was transferred to the Company, but since Lloyd's will not recognise a company as a 'name', these two partners continued to act as nominees and agents of the Company, to which all underwriting profits were handed over, the Company being responsible for any losses. These profits were brought into the Company's accounts with those of the rest of their business. In 1919 one of these nominees retired and in 1920 the other died, whereupon the underwriting business ceased. The company claimed that the underwriting business was a business separate from their other activities and that it should be treated as a separate business in computing their liability. The Special Commissioners allowed their appeal.

Held: that the question was one of fact, and that there was evidence on which the Commissioners could come to their decision."

Rowlatt J. in the course of his speech said at pages 88 and 89: —

"... This company carried on the business of underwriting. It also had a fleet of steamers. I cannot conceive two businesses that could be more easily separated than those two. They both have something to do with ships; that is all that can be said about them. One does not depend upon the other; they are not interlaced; they do not dovetail into each other, except that the people who are in them know about ships; but the actual conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting; it does not affect the ships. They might stop the ships and it does not affect the underwriting. They might carry on underwriting in a country where there were no ships, except that it would not be commercially convenient; but the two things have nothing whatever to do with one another."

The second case cited in support of the respondent's view is *Commissioners of Inland Revenue* v. *Williamson Brothers*[2] on the same point.

It seems to be reasonably plain from the above two cases that though there is one company running two businesses if the fact could be established that there are two sources of income, it necessarily follows the two sources must be dealt with separately.

Counsel for the appellant cited certain authorities which far from supporting the appellant's case were clearly distinguishable (see pages 17-19 of the case stated).

The capital allowances claimed by the appellant were in regard to expenditure incurred by the appellant in the planting of rubber, cocoa and oil palm in the estates at Tomanggong and Litang.

From these facts there can be no doubt whatever that there are at least two pieces of land in which pure timber operation business, viz.; logging on the land were carried out at Dagat and at Tenggara. For the relevant years of assessment the appellant carried out pure timber operations business at Malubok Estate. On these three pieces of land — Dagat, Tenggara and Malubok — for the relevant years of business the operations were pure timber operations without any adulteration of plantation.

That being the position the Special Commissioners could not possibly have arrived at any other conclusion but that this is a business of timber operations which is a source of income.

All six pieces of land are situated in different areas, although adjoining each other. The point to note is that each estate can be identified as being separate. It follows from that each place forms a source of income, each disconnected one from the other as was found by the Special Commissioners at page 4 of their findings.

In respect of the other estate, viz.; Litang Estate and Tomanggong, the plantation operations and the timber operations were carried out at the same place but not at the same time.

Since the appellant had already one source of income from timber operations, as to which reference has been made, and another source of income from plantation business at Bode Estate, the timber operations and plantation operations could easily be separated in these two estates. The estates are not only situated at two different places but the timber operations and the plantation operations could easily be separated and the Special Commissioners have so found.

The logging operations at Dagat and Tenggara for North Borneo Timber Co. Bhd. are quite distinct and separate from plantation operations.

In that state of circumstances the question for the determination before this court is whether upon the facts and in law the appellant's timber and plantation operations constituted a single integral business as claimed by the appellant or were two distinct sources or businesses, as claimed by the Revenue. To determine that question it will be necessary to quote the essential provisions of the Income Tax Act, 1967 (briefly called "the Act") upon which the whole appeal turns.

The expression "source" is defined in section 2 of the Act to mean "a source of income".

Section 5(1) of the Act (omitting the irrelevant parts) provides that the chargeable income of a person upon which tax is chargeable ... shall be ascertained in the following manner: —

(a) first, the basis period *for each of his sources*....;

(b) next, his gross income from *each source*...;

(c) next, his adjusted income from *each source* ...; or in the case of a source consisting of a business, his adjusted income or adjusted loss from that source...;

(d) next, his statutory income from *each source* ...;

(e) next, his aggregate income for that year and his total income for that year shall be ascertained....;

(f) next, his chargeable income for that year shall be ascertained....

Next section 5(2) reads: —

"For the purposes of this Act, any income of a person from any source or sources, and any adjusted loss of a person from

any source or sources consisting of a business may be ascertained for any period (including a year of assessment) notwithstanding that —

(a) the person in question may have ceased to possess that source or any of those sources prior to that period; or

(b) in that period that source or any of those sources may have ceased to produce gross income or may not have produced any gross income."

It seems to me perfectly clear from sections 5(1) and (2) that a person can also have several sources of his income.

Section 21(1) — omitting the irrelevant parts — of the Supplementary Income Tax (Amendment) Act, 1969 is in these terms: —

"*Ascertainment of timber profit.*

21.(1) The timber profit (if any) of a person from a source for a year of assessment (in this section referred to as the relevant year) shall consist of —

(a) such parts of the adjusted income (in this section referred to as the adjusted timber profit) of that person from that source for the basis period for the relevant year as are attributable only to amounts included in the gross income of that person from *that source* for that period which are derived from timber operations; and

(b) ....

Provided that, in ascertaining the adjusted timber profit of that person for that period,

(a) a deduction which is made under the provisions of Chapter 4 of Part III of the principal Act from his gross income from *that source* for that period shall be made —

(i) only if it is patently attributable to the timber operations in relation to *that source*; or

(ii) ... in an amount which bears the same proportion to that deduction as the amounts included in the gross income of that person from that source for that period which are derived from timber operations bear to the gross income of that person from *that source* for that period, ...

(iii) ....

(b) where that person has a business source which consists partly of timber operations and partly of some other activity and in that period any timber of that part of the business which consists of timber operations is first used in any other part of the business, then an amount equal to —

(i) the market value of that timber ...; or

(ii) the cost of bringing that timber ...

whichever is the less shall be treated as gross income derived from timber operations of that person from that business source for that period."

Quite clearly section 21(1) envisages that a person can have a business with several sources. It is equally clear from the provisions of the Act that a person (which term includes a company) can have two sources of income and each is distinct from the other. Significantly enough the provisions make mention of "each source" or "any source" or "that source".

On the part of the respondent it was contended that the plantation is a separate and distinct source consisting of a business, the plantation allowance can only be made or allowed in relation to the source consisting of that business, viz.; plantation.

The timber operation is another separate and distinct source of business and as such counsel for respondent argues that the capital allowances brought forward in the plantation, i.e. cocoa, palm oil and rubber business should not be allowed as against the profits from the timber business. That this is so is provided by section 5(1)(c) of the Act which is in these terms: —

"5.(1) Subject to this Act, the chargeable income of a person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner —

(a) — (b) (irrelevant)

(c) next, his adjusted income from *each source* (or in the case of *a source consisting of a business, his adjusted income or adjusted loss from that source)* for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part."

The relevant provision referred to is found in Chapter 4 under the heading "Adjusted Income and Adjusted Loss" in section 33(1) which reads: —

"33.(1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of *that person from that source for that period* all outgoings and expenses wholly or exclusively incurred during that period by that person *in the production of gross income from that source,* including...."

See *Nathan* v. *F.C.T.*[3] at page 189 where the passage reads: —

"The legislature in using the word 'source' means not a legal concept, but something which a practical man would regard as a real source of income. Legal concepts must, of course, enter into the question when we have to consider to whom a given source belongs. But the ascertainment of the actual source of a given income is a practical hard matter of fact."

Much the same thing was said in *Rhodesia Metals Ltd.* v. *Taxes Commissioner (South Africa)*[4] at page 426: —

"Source means not a legal concept but something which a practical man would regard as a real source of income... the ascertaining of the actual source is a practical hard matter of fact."

On examination of the facts it seems that the appellant's logging and plantation operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a single business and the Special Commissioners gave as their reason that the logging operations on those estates were a prerequisite to planting.

In respect of the timber operations at Dagat timber concession, this was not alienated for agricultural purposes and was situated in a different area from appellant's estates. It cannot therefore be an integral part of the appellant's business on the estate in question.

Logging had taken place in two to three square miles of jungle land each year since 1953 on an annual licence and appellant had made gross sales of timber therefrom amounting to some five million dollars per annum during the years 1967 to 1971. The annual licence was replaced with a twenty-one-year licence which permitted the appellant to extract only timber up to 1978. The appellant had not applied for alienation of any land in the said timber concession for agricultural purposes.

I am further fortified in the conclusion I have reached by reference to the Act in which Schedule 3 clearly distinguished the capital allowances for forest expenditure from the capital allowances for plantation expenditure.

Schedule 3 clearly distinguishes the two types of allowances, it follows that each source should be treated separately.

I am further confirmed is this view which I take by the Supplementary Income Tax Act — Act 54 which provides for timber operations under Part IV the heading of which reads "Timber Profits Tax".

It was however suggested in the argument before this court that the Special Commissioners in the case stated effectively rested their decision in law on the case of *Director-General of Inland Revenue* v. *American Leaf Blending*[5] shortly called in this judgment "*ALB* case" at pages 15, 20 and 21 of the case stated. The decision of the Federal Court in that case was reversed by the Privy Council — see [*1979*] *1 M.L.J. 1.* It is true that the Special Commissioners quoted the *ALB* case but it is not strictly correct to say that the Special Commissioners in the case stated rested their decision in that case. The Special Commissioners at page 20, sub-paragraph (9), said and I quote: —

"The facts of the case before us showed that the appellant here had more than one business and what is more important, for the purposes of our Income Tax Act, more than one source of business."

The appellant cannot say that the Special Commissioners had not reached a finding of fact based on the facts before them. (See Deciding Order of the Special Commissioners — Paragraph 3 at page 4). The *ALB* case was decided upon its own particular facts and in the light of the circumstances disclosed. That case recognises that there could be more than one source, and room for overlapping from one source and another source. Furthermore it is concerned with deductions for losses and not with capital allowance, whereas the instant case deals with capital allowances, and so is distinguishable on its facts.

The question for the determination of the Special Commissioners was whether upon the facts and in law the appellant's timber and plantation operations were two distinct sources or businesses and this seems to me to be essentially a question of fact and of inference from the facts found proved by the Special Commissioners. It is my view that there was ample evidence on which they could find as they did. Those being the facts and those being the findings of the Special Commissioners I see no merit in the appeal.

It is an accepted principle and on the authorities that this court can only disturb the findings of the Special Commissioners if they are without basis or without any evidence. The burden is on the appellant to prove to the satisfaction of this court that the evidence of the Special Commissioners are against the weight of evidence. One such authority is *Edwards* v. *Bairstow & Harrison.*[6] The appellant has not however discharged the onus so cast upon him. The court can see no good reason why the decision of the Special Commissioners should be disturbed. They arrived at clear and definite findings on the questions of fact and there was ample evidence to support these findings.

For the reasons I have endeavoured to state, this appeal is accordingly dismissed with costs.

The appellants appealed against the above decision to the Federal Court.

FEDERAL COURT.

S. Woodhull (*Thomas Chia* with him) for the appellants.

Mokhtar bin Haji Sidin (Senior Federal Counsel) (*Sufardi bin Rijan* with him) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): This appeal is against the decision of the learned judge.

The facts are either agreed or not in dispute and may be set out shortly. Appellant company were registered in 1950 and commenced business the same year. The principal objects of the company, *inter alia,* were the acquisition of any rubber, coffee, cocoa, coconut or other plantations and the carrying out of the business of planters, growers and manufacturers of rubber and so forth. Immediately upon its registration appellant company commenced business by acquiring two rubber estates in 1950, namely,

(a) *Litang Estate* with a total of 4,700 acres of which 1000 acres were planted with rubber; and

(b) *Bode Estate* with a total of 900 acres of planted rubber with no reserved land.

Subsequently, appellant company were involved in other estates such as Dagat Estate, Tomanggong Estate, Malubok Estate and Tenggara. It is sufficient to say that of these, no planting of any kind was carried on in two estates. One is Dagat Estate where the land was never alienated for plantation. It was gazetted as a forest reserve. Logging was carried on since 1952 by appellant company which were granted annual licence. Application to plant bananas was only made in 1967 but was rejected. Logging continues. The other is Tenggara. Appellant company were approached by North Borneo Timber Co. Bhd. in 1965 to log timber for them on contract. Appellant company were given a contract to extract timber and paid a fixed price per cubic foot of logs delivered to North Borneo Timber Co. Bhd. The contract terminated in 1969.

The head office of appellant company was at Sandakan from where effective overall management and control of all its business operations were exercised. These included marketing of appellant company's products, determination of sales policies and procedures, contracts for capital equipment and purchases of major items such as fuel, fertilisers and general stores. The individual estates of appellant company held cash balances for payroll and similar operational disbursements and maintained, for central supervision, records in this specific connection. Staff and equipment for the extraction of timber and consequential planting operations have been transferred from one location to another. Assessments were raised for the four years of assessment 1968-1972. Appellant company were served with notices for additional assessments in 1973 as the Revenue adopted the view that appellant company's estate or plantation operations were a separate source or business from their timber extraction operations and computed the adjusted income accordingly. The particulars of assessment are as follows: —

Year of Assessment	*Tax Assessed*	*Additional Assessment*
1968	1,061,556	431,112
1969	46,649	356,253
1970	221,839	1,019,229
1971	495,000	90,790
1972	500	67.202

The question for determination of the Special Commissioners is whether upon the facts and in law the appellant company's timber and plantation operations constituted a single integral business, as claimed by appellant, or were two distinct sources or businesses as claimed by the Revenue. The Special Commissioners decided that: —

(i) Appellant's operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a business and each estate was a separate source of income.

(ii) Appellant's timber operations at Dagat constituted another business and was another source of income.

(iii) Appellant's contract to log for the North Borneo Timber Co. Bhd. constituted another business and was another source of income.

The learned judge upheld the decision of the Special Commissioners. Hence the appeal.

The contention of appellant is that, on the facts, its timber operations and plantation activities constitute one source of business. On the other hand, the Revenue says that the timber operations and plantation activities constitute two separate businesses. According to the deciding order of the Special Commissioners there are five sources of income.

In effect there were two main categories of business, namely, plantation activities (involving logging and extraction of timber) and timber operations (involving no planting). The first is where logging operation and extraction of timber are necessary in order to prepare the land for planting of rubber, oil palm, cocoa and so forth. In which case the timber operation and the plantation activity would constitute a single integrated business. Actually it is a business with two sources of income, one from timber operation and the other from plantation activity. This is so in respect of all estates managed by appellant except Dagat Estate and Tenggara. Dagat Estate and Tenggara each produced a source of income through its distinct and separate business of timber operations. As such, we consider that the two timber operations being both run by appellant, they should be treated as one separate business not involving any plantation activity. It was not as if the timber operations were necessary to prepare the land for planting like the other estates. In the case of Dagat Estate appellant was carrying out a purely timber operation for which appellant reaped enormous profits. It was not argued before us that activity at Tenggara did not constitute timber operation. Timber operations were making such good profits that Government found it necessary to introduce supplementary tax law to siphon off excessive profit in the form of Supplementary Income Tax Act, 1967.

We think a clear distinction must be made between the two categories of business of appellant company. Where timber operation was carried out to prepare land for plantation activity then the timber operation and plantation activity should be treated as one single integrated business of appellant company. But where appellant company carried out purely timber operations either on its own, under licensed or on contract not with the view of preparing the land for plantation activity then such timber operations must be treated as a separate business of appellant company. Such activities were purely timber operations. Profits made from such activities were from the business of timber operations, nothing to do with plantation activities at all. The fact that such operations were carried out by appellant company whose objects were planting and so forth and most of whose shareholders are planters by profession does not make a purely timber operation into a plantation business. No amount of camouflage could turn a purely timber operation business into a plantation business merely because the operator's main business is planting. We cannot see how it could be argued that appellant was not carrying on a separate business by its timber operations at Dagat and Tenggara. If it were so many people who belong to other professions but carrying out timber operations would advance the same argument.

It should be made clear that in *American Leaf Blending Co. Sdn. Bhd.* v. *Director-General of Inland Revenue*[5] appellant claimed it was entitled to set off against its income from the letting of its property the balance of unabsorbed capital allowances in respect of its tobacco manufacturing business. This claim was rejected by both the High Court and this court. It was abandoned in the Privy Council. So, the only matter before the Privy Council was appellant's claim under section 43 to have deducted from the assessments on the appellant to income tax for 1968 and 1970 the unexhausted balance of adjusted losses incurred in carrying on its tobacco business between 1961 and 1964.

The various paragraphs of the charging section of the Income Tax Act, 1967, i.e. section 4 are capable of overlapping. Although rents are referred to in paragraph (d) of section 4 they may nevertheless constitute income from a source consisting of a business if they are receivable in the course of carrying on a business of putting the taxpayer's property to profitable use by letting it out for rent. Under section 43(1) it is essential to find out whether rents are income from a business. If they are, no further argument is necessary; adjusted losses from a business of the taxpayer for previous years of assessment are deductible in ascertaining the taxpayer's aggregate income.

Appellant argued that they were concerned with the scheme of the Income Tax Act, 1967 which had been construed by the Privy Council in the *American Leaf Blending* case.[5] It was said that the Special Commissioners were concerned more with identifying sources or businesses rather than considering the scheme of the Act itself and that they relied wholly on the decisions to arrive at their conclusion. The decision of this court in that case had since been set aside by the Privy Council. To say that the learned judge did not comment on that case is really

misleading. We need only refer to what was stated by the learned judge at page 88 of the Appeal Record: —

"It was however suggested in the argument before this court that the Special Commissioners in the case stated effectively rested their decision in law on the case of *Director-General of Inland Revenue* v. *American Leaf Blending* [1975] 2 M.L.J. 26 shortly called in this judgment "ALB case" at pages 15, 20 and 21 of the case stated. The decision of the Federal Court in that case was reversed by the Privy Council — see [1979] 1 M.L.J. 1. It is true that the Special Commissioners quoted the *ALB* case but it is not strictly correct to say that the Special Commissioners' in the case stated rested their decision in that case."

There is force in respondent's contention that the learned judge in fact applied the decision of the Privy Council in the *American Leaf Blending* case[5] which recognised several sources of business and room for overlapping. In the present case under appeal there is the added difficulty as the business of timber operation attracts the consideration of the Supplementary Income Tax Act, 1967. The learned judge was correct to point out that the *American Leaf Blending* case[5] was concerned with the deduction for adjusted losses and not of capital allowances. The present case under appeal is concerned with capital allowances. It is therefore distinguishable.

We are here dealing with a company, not Datuk Barrett who may be the major shareholder. Appellant company was formed to make profits for its shareholders. Any gainful use to which it puts any of its assets *prima facie* amounts to carrying on of a business. In the present case the evidence is such that it could not be disputed that appellant was carrying on purely timber operations on Dagat Estate on its own land and Tenggara for North Borneo Timbers on contract. It seems that in both cases the activities had nothing to do with plantation business but were carried out purely for profit.

On the evidence there is only one conclusion of fact on the *American Leaf Blending* case[5] that any reasonable Commissioner would reach, viz., that there is no evidence to rebut the *prima facie* inference that during the relevant periods of assessment appellant was carrying on a business of letting out its premises for rent. Hence the Privy Council allowed the appeal by setting aside the order of this court and restoring the order of the High Court in affirming the decision of the Commissioners.

No one would dispute that a company can carry on one or more businesses. Whether appellant carried on a separate business during the relevant basis periods is a question of fact. The real question in the words of Rowlatt J. in *Scales* v. *George Thompson & Co. Ltd.*[1] is "was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses".

American Leaf Blending case[5] is probably relevant to the businesses carried on at Litang, Tomanggong and Malubok. In order to plant certain crops the ground has to be cleared. It would mean clearing virgin jungles by logging and extracting timbers. The sales of timber would bring in considerable profits which could assist the planting activities. So the process of logging and extracting timber from the land before planting activities is treated as part of plantation business. But the operations at Dagat and Tenggara were distinct and separate. They had nothing to do with any planting activities on the land. In that sense the *American Leaf Blending* case[5] is not relevant as it is concerned with adjusted losses rather than capital or plantation allowances. The timber operations carried on at Dagat and Tenggara form a separate business as distinguished from plantation activities carried on at Litang, Tomanggong and Malubok which form another separate business.

The facts of the case under appeal are distinguishable from the facts in *Howden Boiler and Armaments Co. Ltd.* v. *Stewart*[7] where a firm of boiler makers embarking on the manufacture of shells during the First World War was held on the facts to have "carried on one business with two departments and not two businesses"

In addition to income tax charged under the Principal Act, i.e. the Income Tax Act, 1967, tax calculated under the Supplementary Income Tax Act, 1967 is charged on timber profit. The following definitions under section 19 of the latter Act are applicable in calculating tax on timber profit.

"'income derived from timber operations' includes all premiums, rents and tributes (by whatever name called) derived from timber operations, or from the granting or assignment of any rights, privileges, licences, or concessions (by whatever name called) for extraction of timber from a forest in Malaysia;

'relevant business' means any business which includes timber operations;

'taxable timber profit' means the taxable timber profit for a year of assessment ascertained in accordance with section 22;

'timber profit' means the timber profit ascertained in accordance with section 21;

'timber operations' means the extraction of timber from a forest in Malaysia or the granting or assignment of any rights, privileges, licences, or concessions (by whatever name called) for the extraction of such timber but does not include the processing, milling, sawing or manufacturing of the timber."

Where a person carries on a business consisting purely of timber operations there is no problem in calculating tax. The problem arises when a person carries on more than one business. When a person has a source which consists partly of timber operations and partly of other activities and any timber from the former is first used in the latter during a basis period the lower of the cost or market value of such timber so used "shall be treated as gross income derived from timber operations of that person from that business source for that period."

"Timber profit" under the Supplementary Income Tax Act is equivalent to statutory income under the Income Tax Act. Some special provisions are really designed to prevent understatement of the taxable timber profit in order to avoid the supplementary tax e.g. timber may be used in another business to reduce gross income from timber operations but proviso (b) to section 21(1) of the Supplementary Income Tax Act prevents this.

Section 21 of the Supplementary Income Tax Act deals with allowable deductions. Allowances are to be allowed in full if "patently attributable to timber

operations". It should be made clear that where an allowance falls to be made under paragraph 75 of Schedule 3 of the Principal Act which provides for an allowance to be wholly or partly carried forward where there is insufficient or no profit, such "carried forward" allowance may not be deducted from the calculation of the "timber profits". In other words, capital allowances, plantation allowances in respect of one business cannot be given as deductions in computing the income of another business. That is the purpose of paragraph 75 of Schedule 3. Furthermore, section 26 of the Supplemental Income Tax Act provides that certain provisions of the Principal Act, such as, sections 4, 5 and 43(1)(a) and (2) do not apply to timber profits tax.

Only revenue expenditure is allowed to be deducted from a source to ascertain adjusted income. Under Schedule 3 of the Principal Act capital allowances are given to a person who, in the pursuit of business, has incurred qualifying capital expenditure on, say, (a) plant and machinery; (b) industrial buildings; (c) plantations and (d) forests.

The allowances given are deducted in ascertaining his statutory income from each business source. He must make a claim for capital allowances due at the time on filing his return. He can claim allowances *only* under any one of the above headings in respect of the same qualifying expenditure. For instance, if industrial building allowance has been claimed, no plantation allowance or any other allowance can be claimed in respect of the same expenditure.

Capital allowances are given in respect of each business which has incurred qualifying expenditure. For instance, in running a plantation a person would have to incur capital expenditure in —

(i) clearing land for planting of approved crops;

(ii) planting approved crops on the land cleared;

(iii) constructing roads on the estate; and

(iv) constructing buildings in the estate for the welfare and the accommodation of those working in the estate.

By "estate" we mean not only plantation for growing approved crops only but land adjacent to or in the vicinity of that plantation which is occupied for the purpose of a business which consists wholly or partly of the working of that plantation.

In the same way a person, engaged in carrying on a business which consists wholly or partly of the extraction of timber under a concession or licence, is entitled to claim a capital allowance called "forest allowance". This allowance is given as he would incur capital expenditure in extracting timber in a forest by constructing: —

(a) roads; or

(b) buildings in the forest for the welfare and accommodation of persons employed in the extraction of timber.

Under paragraph 31 of Schedule 3 of the Principal Act, if a person ceases his business permanently in a certain year he can claim a forest allowance for that year any balance of qualifying forest expenditure not yet claimed as such allowance in that year. On the other hand, under paragraph 32 of the said Schedule 3 where such a person disposes of a forest, then, any allowance which has been made to him is added back to his gross income as a "forest charge". A person having a concession or licence for timber extraction from a forest who assigns or transfers it or surrenders it for valuable consideration is taken to have disposed of a forest for the purpose of paragraph 32 of the said Schedule. We are not concerned with the disposal price as it has no bearing on the imposition of a "forest charge". In calculating the timber profits tax as mentioned earlier certain provisions of the Principal Act do not apply.

Since we agree with the Revenue that there are actually two separate businesses, we consider that the deciding order of the Special Commissioners should be varied, particularly in respect of Dagat and Tenggara by merging into one item. The deciding order should read as follows: —

(i) Appellant's operations at Litang Estate, Tomanggong Estate and Malubok Estate constituted a business and each estate was a separate source of income.

(ii) Appellant's timber operations at Dagat and Tenggara constituted another business and each was a separate source of income.

In other words, there were two separate businesses deriving income from five sources. Subject to this variation we would uphold the decision of both the Special Commissioners and the learned judge. Accordingly, we would dismiss the appeal with costs. Deposit to respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Shelley Yap Chong Chia & Co.*

FABER MERLIN MALAYSIA BHD. v. BAN GUAN SDN. BHD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Syed Othman F.JJ.) June 25 & September 20, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 89 of 1979]

Practice and Procedure — Application for inspection of documents — Building contracts — Claim by contractor admitted and only quantum disputed — "Tens of thousands" of documents — Documents relevant to claim — Rules of High Court, 1980, O. 24, rr. 4(1) & 13(1).

The respondent, a contractor, claimed payment for work done by him. The appellant admitted the claim but disputed the quantum. The respondent applied for discovery and inspection of documents but the appellant objected on procedural grounds. An order was made in the High Court. The appellant appealed.

Held: as on the pleadings the issue was the quantum of the claim, the documents, the tens of thousands of them in the appellant's possession notwithstanding, must be produced for its proper ascertainment, because they are relevant to it.

Case referred to:-

(1) *Chai Yen* v. *Bank of America etc.* [1980] 2 M.L.J. 142.

FEDERAL COURT.

Wong Weng Kwai for the appellant.

K. Thayalan for the respondent.

Cur. Adv. Vult.